

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

WILLIAM KINZELL,

Petitioner,

Against

CHICAGO, MILWAUKEE & ST. PAUL
RAILWAY COMPANY, a corpora-
tion,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME
COURT OF THE STATE OF IDAHO

**BRIEF OF RESPONDENT IN OPPOSITION TO
THE PETITIONER'S MOTION TO PLACE
ON THE SUMMARY DOCKET**

The respondent makes opposition to the granting of the petitioner's motion to place this cause on the summary docket, on the following grounds:

1. The respondent is entitled to have a printed copy of the whole record which the writ of certiorari required the court below to return to this court, and until that record shall have been printed and copies issued to counsel the case will not be ripe for a hearing on the merits. The motion unreasonably assumes that the hearing in this court involves only a single question, that is, the one decided by the Supreme Court of Idaho, and that

in case of reversal of that decision the litigation will be terminated by remanding the case to the trial court for execution of the judgment rendered by that court upon the verdict of the jury. In view of conflicting decisions by different courts, as claimed by the petition for the writ of certiorari, that question requires full argument by counsel and deliberate consideration by the court. Half an hour on each side is not sufficient time for a fair presentation of the matters to be considered. Furthermore, the assumption that the case may be finally disposed of by a decision of this court adverse to the decision of the Supreme Court of Idaho is unreasonable because, other questions are involved in the case which have not been decided, and which, in its opinion the Supreme Court of Idaho stated, merit careful consideration. The respondent's assignments of error raise questions as to the fairness of the trial, and we respectfully maintain that, by the record, it appears that proceedings on the trial were shameful. Questions of law are raised by allegations of errors in the giving and refusal of instructions to the jury. And the enormous amount of the verdict challenges the attention of an appellate tribunal. The unfairness of depriving the respondent of any opportunity to submit these important questions for decision by an appellate court is apparent.

2. With respect to the practice in cases brought to this court by certiorari from State tribunals, this case is one of first impressions because the case is here on a writ of certiorari granted under authority conferred by a new statute; therefore, the scope of the court's jurisdiction must be considered and passed upon. Is the cause in its entirety now lodged in this court for the purpose of a complete review of the record and determination by this court of all the questions raised by the

respondent's assignments of error, or will the hearing and decision be restricted to the single question decided by the Supreme Court of Idaho? Undoubtedly, affirmance of that decision by this court will be a final determination of the rights of the parties in the cause, but, in case of reversal of that decision, will the case be remanded to the trial court for execution of its judgment, or will the mandate be directed to the Supreme Court of Idaho, in the usual form when cases are reversed, for further proceedings not inconsistent with the decision of this court?

Formerly the only method of bringing to this court for review decisions of State courts was by a writ of error, and the jurisdiction of this court was limited to the consideration of federal questions or questions pertaining to national affairs. Whilst in causes brought to this court from federal courts of inferior jurisdiction, by a writ of certiorari, the jurisdiction of this court was not so limited, but was full and complete so that all questions, whether contested in the court of original jurisdiction or not, were subject to final determination here.

On reviewing a final decree of the federal court by virtue of a writ of certiorari this court is called upon to notice and rectify any error that may have occurred in the interlocutory proceedings.

Hamilton-Brown Shoe Co., v. Wolf Bros. & Co.,
240 U. S. 251-263; 60 Law Ed. 629, and authorities cited in the opinion of the court by Mr. Justice Pitney.

The act of Congress under authority of which the writ was granted in this case (Act of September 6, 1916,

39 U. S. Stat. 726; U. S. Compiled Stat. 1918, Compact Ed., Sec. 1214) prescribes that:

“It shall be competent for the Supreme Court by certiorari or otherwise, to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by a writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had, * * * where any title, right, privilege, or immunity is claimed,” etc.

According to the letter of this statute, authority is conferred upon the supreme court by certiorari to require that there be certified to it *for review and determination any cause* of the classes specified. It is *a cause* that may be brought up, not a mere controversy in a cause, nor a question involved therein, but it is *the cause* that may be brought up, and *the cause* may be brought up *for review and determination*. Therefore, the respondent has a right to apprehend that this court may hold that the case in its entirety is here for review and determination. A reason for a literal interpretation of the words of the act is, that it may be presumed that Congress intended that the exercise of its appellate jurisdiction by this court in cases originating in the state courts should be uniform and harmonious with jurisdiction and practice in cases which were originally litigated in federal courts of inferior jurisdiction.

One of the errors assigned at bar is, refusal of the trial court to give a peremptory instruction to the jury, requested by the respondent, to render a verdict in the defendant's favor. That assignment of error challenges the sufficiency of the evidence to sustain jurisdiction of a federal court, and even if this court should not concur

in the decision rendered by the Idaho Supreme Court, for the particular reason on which that decision was rested, its judgment may, nevertheless, be affirmed for other good and sufficient reasons, and it will not tend to expedite the cause to send it back without correcting a very palpable error of the trial court with respect to its jurisdiction, founded upon the Employers' Liability Act.

St. Louis, I. M. & S. Ry. vs. McWhirter, 229 U. S. 265.

Wherefore, in order that there shall be no failure to make a full and complete presentation of the cause on the respondent's part, it is our intention to submit at the proper time a brief covering all the points wherein we believe that law and justice require an affirmance of the decision by the Supreme Court of Idaho, and we protest against any disposition that may be made of the case upon such a hearing as may be had if the petitioner's motion should be granted.

Respectfully submitted,

Heenan H. Field
Gron Korte

Attorneys for Respondent.

No. 485

JAMES D. MA

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1918

WILLIAM KINZELL,

Petitioner.

against

CHICAGO, MILWAUKEE & ST.
PAUL RAILWAY COMPANY, a
corporation,

Respondent.

*On Petition for a Writ of Certiorari to the
Supreme Court of Idaho.*

PETITION, BRIEF AND COPY OF OPINION
OF THE SUPREME COURT
OF IDAHO.

JOHN P. GRAY,

Counsel for Petitioner.

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1918

WILLIAM KINZELL,

Petitioner.

against

CHICAGO, MILWAUKEE & ST.
PAUL RAILWAY COMPANY, a
corporation,

Respondent.

*On Petition for a Writ of Certiorari to the
Supreme Court of Idaho.*

PETITION, BRIEF AND COPY OF OPINION
OF THE SUPREME COURT
OF IDAHO.

JOHN P. GRAY,

Counsel for Petitioner.

TABLE OF CONTENTS.

| | Page |
|--|------|
| Petition ----- | 1 |
| Opinion of Supreme Court of Idaho----- | 17 |
| Brief in support of petition ----- | 26 |
| Notice of submission----- | 51 |

LIST OF CASES REFERRED TO IN PETITION OR BRIEF.

| | Page. |
|--|----------------|
| <i>Cincinnati N. O. & T. P. R. Co. v. Hall,</i> 243 Fed. 76----- | 12, 45 |
| <i>Columbia & P. S. R. Co. v. Sauter,</i> 223 Fed. 604 (C. C. A. 9th Cir.)----- | 33 |
| <i>Delaware L. & W. R. Co. v. Urkonis,</i> 238 U. S. 439----- | 35 |
| <i>Dickinson v. Industrial Board of Illinois,</i> 280 Ill. 342----- | 38, 40 |
| <i>Forsyth v. Hammond,</i> 166 U. S. 506----- | 49 |
| <i>Pederson v. D. L. & W. R. Co.,</i> 229 U. S. 146----- | 11, 31, 42, 47 |
| <i>Philadelphia B. & W. R. Co. v. McConnell,</i> 228 Fed. 263----- | 42 |
| <i>Raymond v. C. M. & St. P. R. Co.,</i> 243 U. S. 43----- | 11, 12, 35, 36 |
| <i>Shanks v. D. L. & W. R. Co.,</i> 239 U. S. 556-- | 29, 35 |
| <i>Southern Ry Co. v. M'Guin,</i> 240 Fed. 649---- | 13, 47 |
| <i>United States v. C. M. & P. S. Ry Co.,</i> 219 Fed. 632----- | 38 |